

**KENTUCKY PERSONNEL BOARD
MINUTES OF FEBRUARY 15, 2013**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chairman Doug Sapp on February 15, 2013, at approximately 9:30 a.m., 28 Fountain Place, Frankfort, Kentucky.

Board Personnel Present:

Wayne "Doug" Sapp, Chairman
David F. Hutcheson, Jr., Member
Tommy W. Chandler, Member
Donald W. "Don" Blevins, Member
Ramona Herndon-Griffin, Member
Mark A. Sipek, Executive Director and Secretary
Boyce A. Crocker, General Counsel
Linda R. Morris, Administrative Section Supervisor
Cynthia Perkins, Administrative Specialist

Board Personnel Absent:

Larry B. Gillis, Vice Chairman¹
David B. Stevens, Member

2. **READING OF THE MINUTES OF REGULAR MEETING HELD JANUARY 11, 2013**

The minutes of the last Board meeting had been previously circulated among the members. Chairman Sapp asked for additions or corrections. Mr. Blevins moved to approve the minutes, as submitted. Ms. Herndon-Griffin seconded, and the motion carried 5-0. The Board members signed the minutes.

3. **EXECUTIVE DIRECTOR'S REPORT**

Mr. Sipek explained that based upon Mr. Crocker's research, there was no problem with Mr. Gillis listening-in on the Board meeting via telephone. Mr. Gillis was aware that he could not participate in the proceedings.

¹ Mr. Gillis was connected to the Board meeting via telephone to listen in, but was considered absent from the meeting. He did not participate in any discussion or vote on any matters. No objections were made by any person or party attending the Board meeting. Mr. Gillis and the Board terminated the phone connection prior to the Board going into closed session. Mr. Gillis was not reconnected when the Board returned to open session.

Mr. Sipek discussed the Board's budget; stating that appeals are being scheduled for evidentiary hearings in the next fiscal year, since he and Mr. Crocker are the only hearing officers available at this time. The Board staff will continue to review the situation and will keep the Board members informed. Mr. Sipek stated that the Board is also facing serious video equipment failure. Two hearing rooms are working with one recorder each. In addition, a digital handheld recorder was borrowed from another Agency. The Board is looking for other solutions.

Mr. Blevins asked about requesting supplemental funds. Mr. Blevins stated that Mr. Crocker and Mr. Sipek cannot continue to handle all the hearings; as there are 200 plus active appeals.

Chairman Sapp said it is likely the Board will run out of funds in the next fiscal year too, and he is in favor of requesting supplemental funds.

Mr. Blevins moved to ask for supplemental funds for the Board to continue with contract hearing officers. Judge Chandler seconded and the motion carried 5-0.

Mr. Sipek stated that he would prepare the request in the upcoming week.

Mr. Sipek stated that there are two appeals he would like to discuss. *Lemon Moore vs. Transportation* (2011-CI-001354) and *Corrections vs. Bennett Smith* (2012-CA-000104-MR). Judge Shepherd reversed the Board's decision in Lemon Moore. Mr. Sipek advised that no action be taken at this time, but can be discussed in closed session. In Bennett Smith, the court affirmed the Board's Final Order.

At the conclusion of Mr. Sipek's report, Chairman Sapp called for the Personnel Cabinet's report.

4. PERSONNEL CABINET'S REPORT

The Hon. Dinah Bevington and Commissioner Mary Elizabeth Harrod came forward to present the Personnel Cabinet's report.

Ms. Bevington and Ms. Harrod explained the desk audit process. Ms. Harrod stated that the Cabinet is charged with the creation and administration of the Classification and Compensation System and to ensure that all state employees are properly classified.

Desk audits are requested three ways: Personnel Board Order, request from an agency, or the Personnel Cabinet conducts a random desk audit.

A Classification Analyst will contact the agency and sets up a meeting with the employee and first-line supervisor. A standard set of questions is asked of both parties. A review of the employee's position description, classification, and evaluations is conducted. All the information gathered by the Analyst is reviewed with the Classification Branch Manager and a recommendation is made (i.e. the employee is correctly classified or the employee needs to be placed in a different classification that is consistent with the duties and qualifications of the employee.)

The Cabinet currently has three staff personnel to conduct desk audits; and two new employees are in training. Ms. Harrod stated that they would like to have a total of nine employees.

The Cabinet is not behind on Board ordered desk audits which are performed first. However, the Cabinet is behind on random desk audits. Mr. Hutcheson asked how many desk audits were conducted annually. Ms. Harrod stated that she will get that information for him.

Mr. Sipek stated that the Cabinet is very helpful with desk audits and sometimes the parties agree to settle appeals based on the desk audit. It also helps the Board focus on key issues for hearings.

At the conclusion of the Personnel Cabinet's report, Chairman Sapp called the parties forward for oral argument.

5. ORAL ARGUMENTS

A. Scherry Griffin v. Cabinet for Health and Family Services (Both requested)

Present for oral argument were the Appellant, Scherry Griffin; counsel for Appellant, the Hon. Ruth Baxter; and counsel for Appellee, the Hon. Mary Tansey. Also present for the Agency (KCPC) was Mervin Haddix, Director of Security. After presenting oral arguments, the parties answered questions from the Board.

6. MOTIONS

A. Shena Back v. Justice and Public Safety Cabinet (Corrections) --Appellant's Motion to be Excused from Oral Argument

Mr. Sipek explained that counsel for Appellant, Hon. Don Duff, has medical issues and will not be able to participate in oral argument at the March Board meeting. As the Appellant wants to proceed, the Hon. Paul Fauri has agreed to step-in for Mr. Duff at oral argument to answer the Board's questions.

Mr. Hutcheson moved to accept Appellant's Motion to be Excused from Oral Argument. Judge Chandler seconded and the motion carried 5-0.

7. INVESTIGATIONS

Update on Department of Agriculture Investigation

Mr. Sipek stated that he has made three document requests regarding Finding 20, Finding 21 and Finding 22, which have been complied with by the Department of Agriculture. Mr. Sipek advised that he conducted four interviews, reviewed items from the Auditor's and listened to 18 interviews (some of which lasted several hours). He will be making document requests on Findings 23-26. Mr. Sipek will also be doing follow-up requests with the Personnel Cabinet, as well.

Chairman Sapp stated that the Board has expressed their desire to get through the investigation; however, with the budget situation he knows that it is difficult for Mr. Sipek and Mr. Crocker to keep everything going forward and asked that this information be included in the Board's request for additional funds.

Mr. Sipek stated that there are issues that have come up during the interviews that involve allegations like retaliation and political discrimination, and he wanted to ask the Board members whether he should pursue these matters or strictly stay with allegations in the Auditor's report. Judge Chandler stated that he would like a summary included in Mr. Sipek's report and the Board can decide later whether to pursue these matters. Chairman Sapp agreed that these issues should not be ignored and that these additional matters may be referred somewhere else.

B. Michael O'Brien Request – Justice and Public Safety Cabinet (Juvenile Justice) --Appellee's Response

Present were Appellant, Michael O'Brien, and counsel for the Agency, Adam Adkins. [This matter was taken out of order, due to Appellant calling in stating he was running late.]

Mr. Sipek stated that this case was a not a settlement, but was a recommended order sustaining the appeal. During this time, Mr. O'Brien retired. Mr. O'Brien contacted Mr. Sipek and advised him he had not received his check for back pay. Mr. Adkins stated the check was issued February 12, 2013. Mr. Adkins stated that the delay was caused by miscommunication and his being on leave when the Final Order was received by DJJ. Mr. Adkins was not aware of the process and feels responsible for the delay, as this was his first Personnel Board appeal.

Mr. Crocker stated that the check would be delayed due to the Kentucky Retirement System's thirty-day waiting period.

Mr. Sapp asked how soon Mr. Adkins could look into this matter; Mr. Adkins stated as soon as he gets back to his office. Mr. Adkins stated he will also confirm that the check was mailed to the correct address, as Mr. O'Brien stated that the agency has been mailing documents to the wrong address. Mr. Sapp stated that it was important to get Mr. O'Brien his checks as soon as possible. Mr. O'Brien is concerned about the dollar amount of the checks. Mr. O'Brien wants to make sure he agrees to the amount, as he had to make COBRA payments for health insurance. Mr. Hutcheson wants to make sure that Mr. O'Brien receives his checks and is made whole. Mr. Blevins stated that if Mr. O'Brien does not agree with the amounts of the checks, he should not cash the checks. Mr. Sipek suggested that Mr. O'Brien speak to someone in DJJ, today if possible. Mr. O'Brien stated that he does not blame Mr. Adkins for the delay. Mr. Adkins stated he will find out how the checks were calculated, and he will have DJJ provide documentation showing the calculations.

Mr. Blevins moved to defer this matter to the next meeting of the Board. Ms. Herndon-Griffin seconded and the motion carried 5-0.

Mr. Sapp told Mr. O'Brien that if he is satisfied with the check amounts and does not have any further issues concerning this matter, he does not need to be present at the March Board meeting causing him to incur further personal expense.

C. Shelley Runkle Request - Cabinet for Health and Family Services --Appellee's Response

Present were Agency representatives, Hon. Sean Cutshall, counsel for Appellee, and Ms. Michele Barnes, Human Resource Manager at Health and Family Services.

Mr. Cutshall and Ms. Barnes provided documents, including a timeline of events from October 4, 2012 (date of mediation) to January 10, 2013 (date Ms. Runkle was contacted that her check was ready and the date the check was signed for by Ms. Runkle), concerning the process to issue a check to Ms. Runkle. Mr. Cutshall stated that one reason for the delay was that the Kentucky Retirement System requires a thirty-day waiting period before the process can begin, just in case an appeal is filed. Also, the holidays caused a delay. The Agency is looking into how to speed the process up in the future. Ms. Barnes stated that the Retirement System has also implemented a START system, where an invoice is run once at the end of each month, which causes another delay. Ms. Barnes did admit that there were some errors in the paperwork which contributed to the delay. Ms. Barnes stated that she has three other settlements that are in the same delayed process.

Mr. Sapp stated that he would like Mr. Sipek and Ms. Bevington to look into this matter; specifically what can be done to abbreviate the process. Ms. Bevington agreed to follow-up; however, there are several agencies involved. Mr. Hutcheson stated that the Retirement System should waive the thirty-day wait when it concerns a settlement.

8. **CLOSED SESSION**

Mr. Hutcheson moved that the Board go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudications. Ms. Herndon-Griffin seconded. Chairman Sapp stated that the motion had been made and seconded for the Personnel Board to retire into closed Executive Session, passed by a majority vote of the members present, with enough members present to form a quorum. Pursuant to KRS 61.810(1) (c), (f), and (j), the Kentucky Open Meetings Act, the Board will now retire into closed Executive Session. Specific justification under the Kentucky Open Meetings Act for this action are as follows, because there will be discussion of proposed or pending litigation against or on behalf of the Board; and deliberations regarding individual adjudication. The motion carried 5-0. (11:15 a.m.)

Mr. Hutcheson moved to return to open session. Judge Chandler seconded and the motion carried 5-0. (12:05 p.m.)

9. **CASES TO BE DECIDED**

The Board reviewed the following cases. At that time, the Board considered the record including the Hearing Officers' findings of fact, conclusions of law and recommendations, any exceptions and responses which had been filed, and oral arguments where applicable.

A. Scherry Griffin v. Cabinet for Health and Family Services

Mr. Hutcheson moved to accept Appellant's exceptions, Appellee's exceptions, Appellant's response, Appellee's response and oral arguments and to defer this matter to the next Board meeting. Mr. Blevins seconded and the motion carried 5-0.

B. Bradley Beverley v. Justice and Public Safety Cabinet (Corrections)

Judge Chandler moved to accept the recommended order dismissing the appeal. Ms. Herndon-Griffin seconded and the motion carried 5-0.

C. Jeffrey Brady v. Justice and Public Safety Cabinet (Corrections)

Mr. Blevins moved to accept the recommended order dismissing the appeal. Mr. Hutcheson seconded and the motion carried 5-0.

D. Neal L. Brittain v. Cabinet for Health and Family Services

Mr. Blevins moved to accept the recommended order dismissing the appeal. Ms. Herndon-Griffin seconded and the motion carried 5-0.

E. Charlene Elston v. Justice and Public Safety Cabinet (Juvenile Justice)

Mr. Blevins moved to accept the recommended order dismissing the appeal. Mr. Hutcheson seconded and the motion carried 5-0.

F. Lisa Hulette v. Public Protection Cabinet

Mr. Hutcheson moved to accept the recommended order dismissing the appeal. Judge Chandler seconded and the motion carried 5-0.

G. Karla Muse v. Justice and Public Safety Cabinet (Juvenile Justice)

Mr. Blevins moved to accept the recommended order dismissing the appeal. Ms. Herndon-Griffin seconded and the motion carried 5-0.

H. Andrea Rader v. Energy and Environment Cabinet

Mr. Hutcheson moved to accept the recommended order dismissing the appeal. Ms. Herndon-Griffin seconded and the motion carried 5-0.

I. Vickie Reed v. Cabinet for Health and Family Services

Mr. Blevins moved to accept the recommended order dismissing the appeal. Judge Chandler seconded and the motion carried 5-0.

J. Terry Shelley v. Cabinet for Health and Family Services

Ms. Herndon-Griffin moved to accept the recommended order dismissing the appeal. Mr. Hutcheson seconded and the motion carried 5-0.

K. Stevie Spears v. Cabinet for Health and Family Services

Judge Chandler moved to accept the recommended order dismissing the appeal. Mr. Blevins seconded and the motion carried 5-0.

L. Mark Strevels v. Energy and Environment Cabinet

Mr. Hutcheson moved to accept the recommended order dismissing the appeal. Ms. Herndon-Griffin seconded and the motion carried 5-0.

M. Peggy Washington v. Education and Workforce Development Cabinet (2 appeals)

Mr. Blevins moved to accept the recommended order dismissing the appeal. Mr. Hutcheson seconded and the motion carried 5-0.

Show Cause Orders - Appeals Dismissed – No Response Filed

The following cases had a show cause order entered by the hearing officer recommending that the appeals be dismissed for failure to timely prosecute unless a statement was filed by the Appellants stating sufficient cause to excuse their failure to appear at the scheduled hearing. There was no response submitted by the Appellants to the show cause orders.

- N. Christopher Ludvigsen v. Personnel Cabinet
- O. Melissa Moore v. Personnel Cabinet

Mr. Blevins moved to find that the Appellants had not responded to the show cause order and that the recommended orders be accepted *en bloc* dismissing the appeals for failure to timely prosecute the appeals. Ms. Herndon-Griffin seconded and the motion carried 5-0.

10. WITHDRAWALS

Judge Chandler moved to consider the following withdrawals of appeals *en bloc* and to accept the withdrawals and dismiss the appeals. Mr. Hutcheson seconded and the motion carried 5-0.

- A. Lavonne Byrdsong v. Justice and Public Safety Cabinet (Juvenile Justice)
- B. Kimber Craddock v. Justice and Public Safety Cabinet (Corrections)
- C. Robert Redmon v. Justice and Public Safety Cabinet (Corrections)
- D. William Spurlock v. Transportation Cabinet
- E. Keith Williams v. Justice and Public Safety Cabinet (Juvenile Justice)
- F. Bryan Hendricks v. Finance and Administration Cabinet (COT)
- G. Emily Smith v. Justice and Public Safety Cabinet (Corrections)

11. SETTLEMENTS

Mr. Blevins moved to accept the following settlement, as submitted by the parties, and to sustain the appeal to the extent set forth in the settlement. Ms. Herndon-Griffin seconded and the motion carried 5-0.

- A. Wesley Jackson v. Transportation Cabinet

2. **OTHER**

Mr. Crocker advised Mr. Blevins and Mr. Sapp that they may have to appear before the Legislature to be confirmed.

Chairman Sapp asked if there were any other matters to be discussed. There being no further business, Mr. Hutcheson moved to adjourn. Ms. Herndon-Griffin seconded and the motion carried 5-0. (12:10 p.m.)

Wayne D. Sapp, Chairman

David F. Hutcheson, Jr., Member

Tommy W. Chandler, Member

Donald W. Blevins, Member

Ramona Herndon-Griffin, Member